

CAUSE NO. 1344346

THE STATE OF TEXAS § IN THE 338TH DISTRICT COURT
VS. § OF HARRIS COUNTY, TEXAS
JOSEPH JUAN FACUNDO § JANUARY TERM, A. D., 2015

Members of the Jury:

The defendant, Joseph Juan Facundo, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 20th day of December, 2011, in Harris County, Texas. The defendant has pleaded not guilty.

A person commits the offense of murder if he intentionally or knowingly causes the death of an individual.

A person commits the offense of capital murder if he intentionally commits murder, as hereinbefore defined, in the course of committing or attempting to commit the offense of robbery. Robbery is a felony.

A person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain or maintain control of property of another, he:

(1) intentionally or knowingly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

"In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of theft.

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

"Theft" is the unlawful appropriation of property with intent to deprive the owner of property.

"Appropriation" and "appropriate", as those terms are used herein, means to acquire or otherwise exercise control over property other than real property. Appropriation of property is unlawful if it is without the owner's effective consent.

"Property" as used herein means tangible or intangible personal property or documents, including money, that represents or embodies anything of value.

"Deprive" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

"Effective consent" means assent in fact, whether express or apparent, and includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by deception or coercion.

"Owner" means a person who has title to the property, possession of property, or a greater right to possession of the property than the actor.

"Possession" means actual care, custody, control, or management of the property.

"Deadly weapon" means anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The definition of intentionally relative to the offense of capital murder is as follows:

A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result.

The definitions of intentionally or knowingly relative to the offense of murder are as follow:

A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result.

A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

The definitions of intentionally and knowingly relative to the offense of robbery are as follow:

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it

is his conscious objective or desire to engage in the conduct or cause the result.

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

All persons are parties to an offense who are guilty of acting together in the commission of the offense. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. Mere presence alone will not constitute one a party to an offense.

Before you would be warranted in finding the defendant guilty of capital murder, you must find from the evidence beyond a reasonable doubt not only that on the occasion in question the defendant was in the course of committing or attempting to commit the felony offense of robbery of Russell Lopez, as alleged in this charge, but also that the defendant specifically intended to cause the death of Russell Lopez, by striking Russell Lopez, with a deadly weapon, namely a hammer; or by stabbing Russell Lopez

with a deadly weapon, namely a sword; or you must find from the evidence beyond a reasonable doubt that the defendant, Joseph Juan Facundo, with the intent to promote or assist in the commission of the offense of robbery, if any, solicited, encouraged, directed, aided, or attempted to aid Amber Thornton and/or Tony Escobar in striking or stabbing Russell Lopez, if he did, with the intention of thereby killing Russell Lopez, and unless you so find, then you cannot convict the defendant of the offense of capital murder.

Now, if you find from the evidence beyond a reasonable doubt that on or about the 20th day of December, 2011, in Harris County, Texas, the defendant, Joseph Juan Facundo, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Russell Lopez, intentionally cause the death of Russell Lopez by striking Russell Lopez with a deadly weapon, namely a hammer; or

if you find from the evidence beyond a reasonable doubt that on or about the 20th day of December, 2011, in Harris County, Texas, Amber Thornton and/or Tony Escobar, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Russell Lopez, intentionally cause the death of Russell Lopez by striking Russell Lopez with a deadly weapon, namely a hammer, and that the defendant, Joseph Juan Facundo, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Amber Thornton and/or Tony Escobar to commit the offense, if he did; or

If you find from the evidence beyond a reasonable doubt that on or about the 20th day of December, 2011, in Harris County, Texas, the defendant, Joseph Juan Facundo, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Russell Lopez, intentionally cause the death of Russell Lopez by stabbing Russell Lopez with a deadly weapon, namely a sword; or

If you find from the evidence beyond a reasonable doubt that on or about the 20th day of December, 2011, in Harris County, Texas, Amber Thornton and/or Tony Escobar, did then and there unlawfully, while in the course of committing or attempting to commit the robbery of Russell Lopez, intentionally cause the death of Russell Lopez by stabbing Russell Lopez with a deadly weapon, namely a sword, and that the defendant, Joseph Juan Facundo, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Amber Thornton and/or Tony Escobar to commit the offense, if he did, then you will find the defendant guilty of capital murder, as charged in the indictment.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

An accomplice, as the term is here used, means anyone connected with the crime charged, as a party thereto, and includes all persons who are connected with the crime by unlawful act or omission on their part transpiring either before or during the time of the commission of the offense, and whether or not they were present and participated in the commission of the crime. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible or by both. Mere presence alone, however, will not constitute one a party to an offense.

A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. The term "conduct" means any act or omission and its accompanying mental state.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless the accomplice's testimony is corroborated by other evidence tending to connect the defendant with the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission.

The witness, Amber Thornton, is an accomplice, as a matter of law, if an offense was committed, and you cannot convict the defendant upon her testimony unless you further believe that there is other evidence in the case, outside of the testimony of

Amber Thornton tending to connect the defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

A defendant may not be convicted of an offense on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when the person was imprisoned or confined in the same correctional facility as the defendant unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed.

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

- (A) a municipal or county jail;
- (B) a confinement facility operated by the Texas Department of Criminal Justice;
- (C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and
- (D) a community corrections facility operated by a community supervision and corrections department.

Corroboration is not sufficient if the corroboration only shows that the offense was committed.

Now, therefore, if you find that the witness, Archie Woods, was imprisoned or confined in the same correctional facility and at the same time as the defendant, Joseph Juan Facundo, and that the defendant made a statement against his interest to Archie Woods or you have a reasonable doubt thereof, you can not convict the defendant on the testimony of Archie Woods unless you further find that the testimony of Archie Woods is corroborated by proof

that tends to connect the defendant to the offense, and such evidence must show more than the fact that an offense was committed.

You are further instructed that witnesses Amber Thornton and Archie Woods cannot corroborate each other; but such corroborative evidence, if any, must be from some other source than the said witnesses, Amber Thornton and Archie Woods.

A defendant in a criminal case is not bound by law to testify in his own behalf therein and the failure of any defendant to so testify shall not be taken as a circumstance against him nor shall the same be alluded to nor commented upon by the jury, and you must not refer to, mention, comment upon or discuss the failure of the defendant to testify in this case. If any juror starts to mention the defendant's failure to testify in this case then it is the duty of the other jurors to stop him at once.

You are further instructed that any evidence that any witness has been convicted in any case or cases was admitted before you for the purpose of aiding you, if it does aid you, in passing upon the credibility of the witness and the weight to be given his or her testimony, and you will not consider the same for any other purpose.

A Grand Jury indictment is the means whereby a defendant is brought to trial in a felony prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the question of guilt of the defendant. The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all reasonable doubt concerning the defendant's guilt.

In the event you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you,

and these instructions, you will acquit him and say by your verdict "Not Guilty."

You are the exclusive judges of the facts proved, of the credibility of the witnesses and the weight to be given their testimony, but the law you shall receive in these written instructions, and you must be governed thereby.

After you retire to the jury room, you should select one of your members as your Foreman. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto and signing the same as Foreman.

During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

No one has any authority to communicate with you except the officer who has you in charge. After you have retired, you may communicate with this Court in writing through this officer. Any communication relative to the cause must be written, prepared and signed by the Foreman and shall be submitted to the court through this officer. Do not attempt to talk to the officer who has you in charge, or the attorneys, or the Court, or anyone else concerning any questions you may have.

Your sole duty at this time is to determine the guilt or innocence of the defendant under the indictment in this cause and

restrict your deliberations solely to the issue of guilt or innocence of the defendant.

Following the arguments of counsel, you will retire to consider your verdict.



Frank C. Price, Judge Presiding
338th District Court
Harris County; TEXAS

FILED

Chris Daniel
District Clerk

MAR 06 2015

Time: 9:22am
Harris County, Texas
By: DN
Deputy

CAUSE NO. 1344346

THE STATE OF TEXAS

§ IN THE 338TH DISTRICT COURT

VS.

§ OF HARRIS COUNTY, TEXAS

JOSEPH JUAN FACUNDO

§ JANUARY TERM, A. D., 2015

VERDICT

"We, the Jury, find the defendant, Joseph Juan Facundo, guilty of capital murder, as charged in the indictment."

Cynthia T. Rose

Foreman of the Jury

CYNTHIA T. ROSE

(Please Print) Foreman

"We, the Jury, find the defendant, Joseph Juan Facundo, not guilty."

FILED

Chris Daniel
District Clerk

MAR 06 2015

Time: 12:00 pm
Harris County, Texas

By: [Signature]
Clerk

Foreman of the Jury

(Please Print) Foreman